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Senate Judiciary Committee
State Capitol
P.O. Box 30036
Lansing, MI 48933

Re: SB 694

Dear Senators:

I am the county prosecutor who drafted SB 694 and, having learned of the time constraints on my February 14, 2012 testimony, want to elaborate on its background and purpose.

In 2006 I convicted a Craig Mellon of CSC-1st Degree predicated on sexual penetration of a 14 year old niece who was living in his home along with his wife and two small children, and after he was sentenced to 7-15 years chose not to try lesser charges involving another minor niece, however, she testified in the above trial as a similar acts witness; I subsequently convicted the defendant's brother of CSC involving one of the same nieces, and another brother has a pre-existing CSC conviction, so the defendant's family is pretty well riddled with perpetrators.

No probate petition was filed because Susan Mellon, the defendant's wife, immediately filed for divorce and supported her nieces and own children from day one. After the trial dust had settled Ms. Mellon moved to Marquette County and began pursuing termination of the defendant's parental rights.

DHS wouldn't touch it and she wasted a lot of time and money on an attorney who kept filing "petitions to terminate", oblivious to the fact that one needs jurisdiction first, but even after she obtained a competent attorney she couldn't get over the jurisdictional hurdle, meaning that the Marquette County probate court conceded that there were/are plenty of grounds for termination (parent incarcerated for more than 2 years, parent convicted of an enumerated offense, etc.), but found no grounds for jurisdiction because, according to the court, "criminality" means conduct aimed at the parent's own children.

I submitted an amicus brief pointing out that:

1) This interpretation would make criminality synonymous with child abuse, such that criminality would cease to be a separate ground for jurisdiction.

2) This interpretation is inconsistent with the statutory scheme, i.e., I think we can all agree that the grounds for termination should and do consist of egregious and insurmountable barriers to continued parenthood, whereas the grounds for jurisdiction should and do consist of less egregious and fixable barriers to continued parenthood, so it defies all logic and common sense for a parent's conduct to meet multiple grounds for termination without meeting any ground for jurisdiction. Stated another way, the fact that conviction of any CSC is a ground for termination under MCL 712A.19b(3)(n)(i) should be our first clue that this type of criminality should also be a ground for jurisdiction.

3) This interpretation is inconsistent with the definition of criminality provided by the standard civil jury instructions; MCivJ1 97.36(4) informs us that:

> "the legal definition of criminality is the same as the common understanding of the word criminality. Criminality is present when a person violates the criminal laws of the State of Michigan or of the United States. Whether a violation of the criminal laws of the State of Michigan or of the United States by a parent, guardian, nonparent adult or custodian renders the home or environment of a child an unfit place for the child to live in is for you to decide based on all the evidence in the case."

4) This interpretation is inconsistent with In re MU, 264 Mich App 270 (2004) where the criminality which supported the assumption of jurisdiction consisted of the father's conviction for murdering the children's mother; incredibly, the Marquette County probate court rejected this case as authority for the proposition that criminality can consist of any conduct which goes to parental fitness and took the amended position that criminality means conduct aimed at the parent's own children or the other parent.

The court's decision was, in my mind, a very tortured effort to avoid taking a labor-intensive case imported from another county where the children aren't in any immediate physical danger due to the fact and length of the father's incarceration. Here, however, is what's wrong with the "out of sight, out of mind" approach to child protection:

1) It has been thoroughly de-bunked by In re SR, 229 Mich App 310 (1998), wherein the Oakland County probate court declined jurisdiction because the child was not in any danger from her father, who was serving a 3-8 year sentence for

abusing her; the Court of Appeals held that the fact that respondent was serving a prison sentence when the petition was filed does not eliminate the mental and emotional effect of his conduct on the child. In the case which prompted SB 694, the father's pursuit of contact with his children, on his own and through his seriously dysfunctional family, has been relentless and the threat of his release from prison with his parental rights intact is likewise real, imminent, and a source of tremendous anxiety for the children.

2) It is terribly unfair as follows:

a. Had Ms. Mellon reacted to the allegations against her husband like so many wives in her position, i.e., with disbelief and hostility towards her niece(s), DHS would undoubtedly have petitioned the family into court at the time and termination would have followed that adjudication as naturally as night follows day. Because she acted so decisively to end the marriage so as to protect her own children, this didn't happen and her reward is this terrible legal disadvantage.

b. Were any other mother with small children to strike up a relationship with this father in prison, even taking her children to visit him, etc., she would undoubtedly find herself petitioned into court, yet Ms. Mellon has been pressured by the Friend of the Court to permit contact between her children and their incarcerated father, who is emboldened by Ms. Mellon's predicament and continues to pursue parenting time.

c. When Mr. Mellon is released from prison he will be required, among other things, to stay 1,000 feet away from schools because the legislature has determined that he is a threat to other people's children, yet nothing will stand between him and his own children but a family court tasked with providing parenting time to parents with intact parental rights.

Fixing this situation requires two things: one, that the source of probate court jurisdiction entitled "criminality" be defined so as to include offenses against anyone's children, and; two, that the unfitness of the home created by, e.g., criminality, be defined so as to include homes rendered unfit by the eventuality of an incarcerated parent's physical return.

The SB 694 definition of criminality informs us that criminality means a violation of law by a parent that by its nature or effect renders the home unfit, and creates a presumption of unfitness in the limited circumstance where the criminality consists of an offense against a child.

This definition of criminality, along with the other new language reiterating the fact long since established by case law that unfitness of the home may be anticipatory in nature, simply prevents probate courts from closing their doors, in the interest of caseload

management, to the families of parents incarcerated for offenses against children other than their own. There is nothing about this legislation which obligates DHS to file a petition and nothing about this legislation which obligates a probate court to terminate parental rights in such scenarios – it simply takes off the table some well-entrenched excuses for avoiding these cases altogether.

I look forward to answering any remaining questions you may have on February 14, 2012.

Sincerely,

Karen A. Bahrman
Prosecuting Attorney

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